

Obligations of Counsel

The District of Columbia's Rules of Professional Conduct provide standards for the professional conduct of all members of the District of Columbia Bar. This documents sets forth additional specific standards of performance for attorneys appointed under the Criminal Justice Act.

Obligations to the client

1. Counsel must advise the client of his or her appointment by telephone or mail within thirty days of the appointment. An attorney appointed as first counsel on appeal should make arrangements for an in-person meeting with any client who is still held in the District of Columbia before the client is transferred out of the area.

If counsel who represented the client in the trial court proposes to be appointed to represent the client on appeal, counsel must (i) so indicate on the notice of appeal, and (ii) include with the notice of appeal a certification signed by the client, on a form to be supplied by the Clerk's Office, in which the client states that he or she has been advised of his or her right to the appointment of new counsel on appeal, has discussed the advisability of such an appointment with counsel, and elects to proceed on appeal with the same counsel who represented him or her in the trial court. This certification shall not be construed as a waiver by the client of any claims whatsoever against the counsel who represented the client in the trial court, including without limitation claims of ineffective assistance of counsel. The certification shall not be admissible in evidence in any subsequent proceeding on the merits of any claim against counsel.

2. Counsel must promptly file an appropriate dispositive motion in appeals taken from a pre-trial detention order or its juvenile equivalent.

3. Counsel should consult with the client and endeavor to establish a professional relationship of trust and confidence. Since counsel will usually be able to obtain necessary information from the client by telephone and mail contact, travel outside the District of Columbia area [i.e., 200 miles, see DCCA Administrative Order 01-02] for the purpose of an in-person meeting with the client will be approved only in exceptional circumstances.

4. Counsel must keep the client informed of the progress of the case and must promptly send the client copies of all briefs, pleadings, orders and opinions in the case.

5. Counsel must review the record and confer with the client concerning proceeding before the trial court to determine if there are any issues relating to the effectiveness of trial counsel. Following a reasonable inquiry, counsel shall advise the client of the results. If a non-frivolous claim exists, counsel shall file a motion for appointment in Superior Court and prepare and file a motion for relief pursuant to D.C. Code § 23-110. Where counsel concludes that no non-frivolous claim exists, the client should be advised of the right to seek relief in the trial court pro se. Counsel may file a motion to stay the direct appeal pending resolution of the trial court motion but such stays will not be granted automatically; counsel should show good cause for

staying the direct appeal to await the outcome of the trial court motion. See *Craig A. Williams v. United States*, 783 A.2d 598, 602 n. 4 (2001)(en banc); *Doe v. United States*, 583 A.2d 670 (DC 1990); *Shepard v. United States*, 533 A.2d 1278 (DC 1987).

6. Upon final disposition of the appeal, counsel must notify the client of this court's decision. Counsel should also inform the client of the available options, including but not limited to the right to file a petition for a writ of certiorari in the Supreme Court of the United States. Counsel should investigate whether there is a non-frivolous basis for filing such a petition. If counsel determines that no such basis exists, counsel must immediately inform his or her client in writing of the decision not to file a petition for certiorari, the reasons for the decision not to pursue such relief, and the time limit for a pro se filing of a petition for writ of certiorari. Counsel should file a copy of the notification to the client with this court. Counsel's appointment will terminate upon the filing of the notification. *Qualls v. United States*, 718 A.2d 1039 (1998).

In the event that counsel identifies a sufficient issue or issues on which to base a petition for a writ of certiorari, counsel must, if he or she is a member of the Supreme Court Bar, request a reappointment voucher from this court and file the petition within the prescribed time limit. If counsel is not a member of the Bar of the Supreme Court, counsel must file a motion with this court for appointment of new counsel stating that a non-frivolous basis exists for filing a petition for writ of certiorari.

Obligations to the court

1. Counsel must, within 30 days of receiving notice of initial appointment to an appeal, review the trial court record to ensure that all necessary transcripts of the trial court proceedings have been or are being prepared. While it is trial counsel's duty to order the transcript in conjunction with the filing of a notice of appeal, counsel appointed in a criminal appeal must ensure that the necessary portions have been ordered. An attorney appointed as replacement counsel prior to the filing of appellant's brief must also review the trial court record to confirm that all necessary transcripts have been ordered.

2. Counsel must comply with all applicable court rules regarding the timely filing of motions, briefs and other pleadings and with such other timing requirements as may be specified by the court in a particular case.

3. Counsel is reminded of the obligations imposed under *Anders v. California*, 386 U.S. 738 (1967). If counsel concludes that an appeal contains no non-frivolous issue, counsel must discuss his or her conclusions with the client, including any recommendation that the appeal be withdrawn. If the client agrees to dismiss the appeal, counsel must file a motion to dismiss which must be accompanied by a statement of appellant in accordance with the requirements of *Johnson v. United States*, 513 A.2d 798 (D.C. 1986). If the client does not agree to dismiss the appeal, counsel may advise the court and request permission to withdraw as set forth in *Anders*. A copy of the request to withdraw must be sent to the client but shall not be served on the government. If the court determines that the potential appellate issues are not frivolous, the court may direct counsel to file a brief.

4. Unless an appointment is terminated earlier by order of the court, appointed counsel continues to represent the client throughout the proceedings. The representation shall include disposition of the appeal and of any post-decision proceedings that appointed counsel may elect to initiate. Counsel is expected to continue to represent the client in the appeal until the appeal is concluded. In the absence of a true conflict between an attorney and client, motions to withdraw are disfavored.

If appointed counsel wishes to be relieved of an appointment prior to termination of the proceedings in this court, counsel must file a motion to withdraw. Disagreements over legal and tactical matters, *e.g.*, the issues to be raised in the brief, or the question whether collateral proceedings are warranted, generally will not justify the replacement of appointed counsel. If the client is dissatisfied with counsel's handling of the appeal and asks counsel to withdraw, and if counsel and client are unable to resolve any disagreement, then counsel should file a motion for leave to withdraw. The motion must be served on the client and on the government. The grounds for the motion may be set forth, if appropriate, in an *ex parte* statement or affidavit filed with the motion but not be served on the government (though the motion should alert the government to the existence of the *ex parte* filing).

CLE Requirement

The attention of counsel is directed to Miscellaneous Order No. M-217-03, which sets forth annual continuing legal education requirements for counsel who wish to be appointed by the Court of Appeals under the Criminal Justice Act.